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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,518	08/24/2001	Mark J. Jaroszeski	93004	2429
21901	7590	10/06/2004	EXAMINER	
SMITH & HOPEN PA 15950 BAY VISTA DRIVE SUITE 220 CLEARWATER, FL 33760			ANGELL, JON E	
			ART UNIT	PAPER NUMBER
			1635	

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
09/939,518	JAROSZESKI ET AL.	
Examiner	Art Unit	
Jon Eric Angell	1635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 July 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,4,6,8,10 and 21-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1,2,4,6,8,10 and 21-28 is/are allowed.
- 6) Claim(s) 29-36 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
- Certified copies of the priority documents have been received.
 - Certified copies of the priority documents have been received in Application No. _____.
 - Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/23/04 has been entered.

Claims 1, 2, 4, 6, 8, 10, 21-36 are currently pending in the application and are addresses herein.

Applicant's arguments are addressed on a per section basis. The text of those sections of Title 35, U.S. Code not included in this Action can be found in a prior Office Action. Any rejections not reiterated in this action have been withdrawn as being obviated by the amendment of the claims and/or applicant's arguments.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29-36 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,055,453 (Hofmann et al.).

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The instant claims are drawn to a "system for facilitating the delivery of a desired molecule into a target tissue". Upon further consideration, the instant claim is interpreted as encompassing a device (e.g., an electroporator device) that is capable of delivering a desired molecule into a target tissue wherein the device has all of the following limitations: a molecule introducer designed to introduce a molecule into a target tissue (e.g., a syringe, as indicated in claim 38); wherein the device is capable of delivering a single low-level electric field to a target tissue (e.g., claim 29-32); wherein the device can be used to deliver a molecule to a tumor (e.g., claim 36).

Since the claim encompasses a "system" for delivering a molecule to a target tissue comprising the limitations set forth above, any electroporator that meets the limitations set forth above anticipates the claimed system.

Hofmann teaches an apparatus for needle array electroporation therapy wherein the apparatus can deliver a therapeutic agent (i.e. a desired molecule) to a tumor cell in vivo wherein the device has a syringe/needle applicator for introducing the therapeutic molecule into a tumor and wherein the apparatus is capable of delivering a single pulse low-level electric field such as indicated in the instant claims (e.g., see abstract; column 2, lines 5-37; column 3, lines 35-50; column 9, line 59 through column 11, line 52, etc.). As such, Hofmann teaches an apparatus that meets the limitations of the claimed "system". Therefore, the claims are anticipated by Hofmann.

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Allowable Subject Matter

Claims 1, 2, 4, 6, 8, 10 and 21-36 are allowed in view of the amendment that limits claim 1 to a method consisting essentially of applying a single low-level electric pulse as described in the claim.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon Eric Angell whose telephone number is 571-272-0756. The examiner can normally be reached on Mon-Fri, with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John LeGuyader can be reached on 571-272-0760. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jon Eric Angell, Ph.D.
Art Unit 1635



DAVE T. NGUYEN
PATENT EXAMINER